

**MINUTES**  
Civilian Review Board  
Zoom Webinar

September 24, 2020  
5:30 p.m.

PRESENT: Lindsey Foltz, Rick Roseta, Bernadette Conover, José Cortez, Michael Hames-Garcia, Bill Whalen, Civilian Review Board members; Beatriz Otero-Hernandez, Leia Pitcher, Mark Gissiner, Vicki Cox, Police Auditor's Office; Jason Berreth, Eugene Police Department.

ABSENT: Carolyn Williams

Chair Foltz convened the Civilian Review Board (CRB) meeting at 5:32 p.m. Everyone present introduced themselves.

**1. Agenda and Materials Review**

Foltz thanked everyone for being flexible with rescheduling their meeting because of concerns surrounding the Holiday Farm Fire. They wanted to move the minutes approval to after public comment to make the meeting flow better.

**2. Public Comment**

There was no public comment.

**3. Minutes Approval**

**MOTION:** Conover moved, seconded by Whalen, to accept the August 18, 2020 CRB minutes as presented. The motion passed unanimously.

**4. Comments from Board Members and Commission Liaisons**

Hames-Garcia stated that it continued to be a difficult time to hold these meetings with everything going on, but they were necessary.

Foltz mentioned that they did not attend the last Police Commission meeting but watched a recording of it. There was a long conversation on the pepper ball policy. They were interested in talking about this policy further after CRB reviewed the community impact case. Also, EPD was not enforcing overnight camping anymore and would instead be done by different City agencies depending on location. Foltz was happy to hear new voices on the Commission and stated that they would meet again on October 8, 2020.

Foltz thanked staff for all their work in getting two case reviews ready for them that night.

**5. Case Review #1: Allegation of Excessive Force During an Arrest for Disorderly Conduct and Criminal Trespass**

Pitcher apologized for not having presentations ready for the meeting. They gave an auditory summary of the case.

**I. Summary of Facts**

- Officer A and Officer B were dispatched to a service station concerning disorderly trespassing. The person was making a mess and yelling. The involved person then left the area.
- Officer A and Officer B made contact with the individual. Officer C was observing from a distance.

- Officer B indicated to the individual to get on the ground so they could be handcuffed. After voicing this the individual resisted. A struggle ensued.
- The individual grabbed Officer A's radio cord and Officer A and B reacted physically. Officer C then exited the car and fired the taser, which was marginally successful. Officer A and B contacted the Individual with their hands and elbows before being able to handcuff them.

## II. Allegations

1. **800 Use of Force:** Officer A's use of force was excessive during the arrest.

## III. Adjudication

### 1. 800 Use of Force

- EPD chain of command recommendation: Within Policy
- Auditor's Office recommendation: Within Policy
- Chief of Police: Within Policy

## IV. Issues for CRB Discussion

- Board Overview:

Foltz read allowed a written statement that Williams had provided. Williams appreciated that both cases they would be going over that night were being reviewed together. They wondered if CAHOOTS might have been of better use for this case, since the individual clearly did not trust police. Williams agreed that what the officers had done was in policy but wished it could have been avoided. They emphasized the importance of body cameras and how they wished the footage would be made available to the public.

Roseta understood how CAHOOTS could have been better, but thought it was a hard call to make at the time of dispatch. They pointed out that the service station judged the situation as something that should end in an arrest. Roseta thought that it was possible that CAHOOTS could have helped after the individual was restrained. However, CAHOOTS mainly dealt with mental health issues while this case seemed like the individual was intoxicated.

Whalen agreed with Williams statement about how body cameras should be on all officers. They pointed out that officers tried to restrain the individual in several ways before using force. Even when they made the blows they did so in an apparently reasonable manner and waited to see if the hit had an effect before doing it again. Also, once the individual was handcuffed the officers did not act happy but continued to do their job. Whalen was disappointed to see that one of the officers appeared to kneel on the individual's back.

Hames-Garcia noted that the Use of Force policy said that officers could take into effect intoxication. They were confused on how they could be interpreted. Berreth told him that intoxicated individuals sometimes had a stronger resistance and could be more resilient in situations then if that person was sober. Gissiner added that medical reactions to tasing someone intoxicated should always be considered before initiating. Hames-Garcia also noted that the policy said "time and circumstance permitting" but did not see the individual as an immediate threat. They wondered why the officers were so quick to arrest the individual. If they had taken more time Hames-Garcia thought, they could have had a different outcome.

Conover thought it would be nice to know when CAHOOTS would work since it was hard to know when and if a situation was safe for them to go to. The person at the service station seemed to be out of control so it made sense to call the police. They were glad that adrenaline did not take over the officers and they were able to stay professional. Conover stated that they appreciated seeing years of service listed during a case.

Foltz stated that these videos were hard to watch. They agreed with Hames-Garcia and did not understand why the situation was hands-on so fast. Foltz disclosed that they knew the person at the service station who made the call. They were well trained and had dealt with a lot of situations at the service station. They must have felt like staff and others were not safe if they made this call. Foltz appreciated that the Defensive Tactics Sergeant included a memo saying that they thought force could have been avoided if certain skills were used. They asked if deescalating was looked at with this case. Pitcher noted that the individual had a knife in their pocket. Gissiner added that this was a tough case. De-escalation allegations were all based on judgment calls. The individual had a weapon and was acting erratically which might have been why officers reacted quickly.

Hames-Garcia said that the seriousness of the situation also plays into the need to apprehend. They noted that they do not arrest people unless they have committed a crime and this person had only trespassed. Gissiner emphasized that the allegations for this case were tough and that was one reason it was brought to CRB.

Foltz thought that the body camera footage should be made public. They were disappointed that large portions of the video were muted. Foltz pointed out that generally when one person muted everyone else did. They did not like that this seemed to be something that was taught. Foltz found it hard to see any tactical reason to mute their microphones for this case and it would have been helpful to know what was said.

- Complaint Intake, Classification, and Monitoring:

Roseta wondered if there was ever any verification of drugs in the individual's system. They said it probably was not important but thought that information should be available to them.

Whalen thought the Defensive Tactics Sergeant's memo was helpful, as well as his recommendation on retraining the officers on group arrests.

Conover said that one thing they really liked about Blue Team was that it recorded incidents like this as a matter of course. Sometimes they hear about cases through the media and it was always nice when it was reported internally. Foltz noted that the report they got said this case was internally reported, and asked if that meant that it came to the Auditor through the chain of command. Gissiner mentioned that a lot of internal reports are from the Auditor's Office. They believed that their attention was brought to the case through an online complaint.

- Relevant Department Policies, Practices, and Policy/Training Considerations

Roesta recommended that the officer be retrained based on what the Defensive Tactics Sergeant had said. Whalen agreed.

Hames-Garcia stated that if the department was committed to de-escalation then they needed to focus on it, even in difficult situations.

Cortez noted that the memo said that the officers should review the body camera video. They thought that was a weird way to word it. The review needed to be in-depth because the policy was failing everyone. Cortez understood that this was not a simple situation, but if the end goal was de-escalation then they needed more training on it.

Conover was glad to see they were recommended to be retrained. They hoped that other officers would be trained better because of this situation. Gissiner stated that video could not be used for training unless all officers involved consented. Gissiner did not think that was likely with this case. Conover said that when they served on the Board before the “use of force continuum” was being phased out. Also, there were times when they would hear about when small steps could deescalate situations. They thought that should be done more often.

Foltz thought that Officer C was not helpful in making the arrest go smoother. They were concerned with the selection of Field Training Officers (FTO) because the CRB kept seeing them in cases. These were the people showing new officers how to act and that was concerning.

- Adjudication Recommendations

All members of the CRB concurred with the adjudications made by the EPD chain of command, Auditor’s Office, and Chief of Police.

Cortez stated that they begrudgingly agreed and thought that there were issues with the policy. Hames-Garcia agreed and said that the situation was unnecessary.

## **6. Break**

The CRB took a break from 6:48 p.m. - 6:55 p.m.

## **7. Case Review #2: Allegation of Improper Taser Use During Arrest for Unauthorized Entry of a Motor Vehicle**

Pitcher gave an auditory summary of the case.

- I. Summary of Facts
  - There had been a report that someone was breaking into vehicles.
  - Officer A saw someone who fit the description given and that individual fled. A foot pursuit ensued. The individual slipped on some ice and Officer A deployed their taser into their back.
- II. Allegations
  1. **809: Improper Use of a Taser**
- III. Adjudication
  - EPD chain of command recommendation: Sustained
  - Auditor’s Office recommendation: Sustained
  - Chief of Police: Sustained
- IV. Issues for CRB Discussion
  - Board Overview:

Foltz read Williams’ comments on this case. Williams said that they agreed with the adjudication because the individual showed no immediate threat. They appreciated that the officer agreed that their actions were wrong during their interview.

Conover noted that they had seen interfering with an officer being used as a basis for a charge. They wondered if this was a City ordinance or a State statute. Pitcher replied that it was a State statute and something they had talked about a lot recently. When someone failed to follow the lawful orders of an officer it could be interfering. Conover had an issue with someone running away having a taser used on

them. They believed that in training they were taught to be aware of the individual's surroundings and where they would land. Conover appreciated that the officer looked back and acknowledged that they had done something wrong.

Whalen thought that overall, the situation was unnecessary. It was important now for police to know when it was not necessary to pursue someone. They wondered if the officer tased the individual because the other officers running with him were saying they would use their taser in hopes that the individual might stop running. Whalen appreciated that after reading the policy the officer admitted fault.

Hames-Garcia shared that this case was made easier since the officer admitted his fault. They pointed out that in the report the individual's name was not redacted when it should have been. Hames-Garcia said that at one point the Sergeant said there was no policy violation, but the lieutenant thought it should be looked at again. They were glad that there was a system of checks and balances. Roseta noted that the officer said that in hindsight they had done wrong but questioned if hindsight should be used when they were determining adjudication. It was the actions that were important, not what someone thought after.

Foltz appreciated that the taser policy was specific enough that there was not an argument about if it was violated or not because the individual was running. They noted that in one interview there was an objection due to timeliness after the case was not looked at for sixty days.

Cortez noted that both this case and the first one dealt with petty crimes and how force should not be used in these instances. Whalen mentioned that it was a County Police Officer's car that was broken into. A uniform was stolen and possibly other things. Without any other information it was hard to say what outcomes there would be.

Cortez was grateful for Roseta's comments about the totality of the circumstances. The policy was so specific to the circumstances. They asked about the criteria was for totality of the circumstances. Pitcher mentioned that it was mapped out in a case by the Supreme Court called *Graham v. Connor*. The case included specific factors for officers to look at, but for the most part "totality of the circumstances" encompassed everything that the officer knew at the time of the incident.

- Complaint Intake, Classification, and Monitoring:

Conover noted that the Officer had been employed one year and was just off training. They asked if they had any previous experience before EPD. Berreth replied that any prior experience would have been included in their internal report.

- Relevant Department Policies, Practices, and Policy/Training Considerations

Hames-Garcia stated that training around these issues was very important and they had to trust that it was being done right.

Conover asked how often officers were recertified for taser. Berreth responded that it was done annually and had a written and practical portion to it.

Foltz stated that shooting someone in the back with a taser for something they allegedly did was awful. The officer was not even sure that they had the right person, which made it so much worse. They were happy to see that the taser policy was thorough and clear. Roseta pointed out that this was a hard situation because the individual might have had a gun and gone off to shoot someone else. If the officer had let that happen and not tased the individual they might be thinking the officer messed up. Foltz noted that there

was no indication that a weapon had been stolen. They pointed out that the taser policy would hold up in that situation because there would have been probable cause.

- **Adjudication Recommendations**

All members of the CRB agreed with the adjudications from EPD chain of command, the Auditor's Office, and the Chief of Police.

Conover was glad to see that after the situation occurred the officer was aware that they had done something wrong.

Roseta thought that the decision to warn about the taser use was made a lot earlier than when it was used. The decision to make a warning should be thought about more.

Cortez mentioned that the taser policy said that a verbal warning did not bring the individual into compliance then the use of the taser may be utilized. They asked if this fit the case they were looking at and if it was thought of in accordance with the totality of the circumstances. Pitcher said that when they read that part of the policy, they thought it meant that the taser could be used. Foltz appreciated that unholstering a taser could also be a reportable use of force.

## **8. Auditor Report**

Gissiner informed the Board that they had completed their adjudication recommendation for the Rodrigues case. They had not heard anything back about the case yet.

Gissiner said that there were a lot of use of force cases surrounding tasers with different adjudications as well as another use of force case where the individual broke their arm. Usually they brought any difference of opinion to the CRB so they said those might show up soon.

Gissiner reminded everyone that the community impact case would be brought to them before the end of the year.

Gissiner said that there were a lot of complaints to go through now. They were very busy and as usual the staff was doing a great job.

Earlier in the month Gissiner said they talked to the Washington Post about CAHOOTS and civilian oversight in Eugene.

## **9. Closing Comments**

Hames-Garcia noted that there was an open case about domestic violence that they wanted to review. With the cases they looked at they kept thinking about the separation of one body which reviewed policies and another that reviewed adjudications. Hames-Garcia thought that both those bodies needed to be in the same room together. They thought it was frustrating how there was so much time between policy approval and review. Conover agreed that there needed to be more communication between the two but thought that it was important to have both. Whalen said that it was nice to have so many different people looking at policy and adjudications

Conover liked that they covered two cases but stated that it was a lot of video to look through for one meeting. Whalen agreed and thought that some of the video could have been cut down. Pitcher stated that they had to give them all the footage available. They said that members could ask them for the important time stamps if they wanted. Pitcher said that it was important for members to watch everything because sometimes they catch information that no one else did. Foltz voiced that it was their job to watch

everything because others could not. It was their job to see that nothing else happened. They stated that they thought video should be made public.

Cortez appreciated that the board was a space for them to ask questions.

**10. Adjournment**

Foltz adjourned the meeting at 8:10 p.m.

*(Minutes recorded by Lydia Dysart)*